IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO. 258 OF 2003

Barli chhotu Gupta & ors. ... Appellants

V/s

The Municipal Corpn. of Gr. Mumbai. ... Respondents

CORAM: P.V. KAKADE, J.

DATED: 19TH OCT., 2004.

P.C.:

1. Heard learned counsel for both parties.

2. In view of the facts and circumstances, Rule made returnable forthwith.

3. This is an appeal filed against the order of the City Civil Court, Mumbai dismissing the plaintiffs' suit for protection from removing their stalls of fruits. Plaintiffs 1 to 4 came to the Court submitting that they have been allotted space admeasuring 6'.6" x 3'.6" by the defendants in R-South Ward, situated at Tulsikunj, Near Sugandhi Vihar Hotel, Kandivali (West), Mumbai, and since that date and time they are doing their business of selling the fruits on the said stall. According to

them, the officer of the defendants was collecting the daily charges from them for the said space at the rate of Rs.5/- per day and, therefore, they allowed to run their business at their suit spaces. It was also submitted that in the month of December, 1995 and January 1996, for about 20 days the officer of the defendants stopped collecting the charges of Rs.5/- per day from each plaintiff and therefore they submitted an application to the Deputy Municipal Commissiosner, Zone -IV in January 1996, requesting the Deputy Municipal Commissioner to continue to collect the daily charges from them in respect of the suit spaces. Plaintiffs further submitted that on 18.9.1998, two employees of the defendants had come to their place and threatened that they will not allow to carry on the business of selling fruits and hence the suit for declaration and injunction came to be filed.

4. Defendants challenged the suit on the ground that the notice under Sec.527 of the B.M.C. Act was not served on them by the plaintiffs before the suit was filed. It was further contended that the defendants had right to remove the plaintiffs who are the hawkers from their places as it was obstruction for the public at large. Defendants further submitted that they had never

allotted the plaintiffs the space as alleged for conducting their business and submitted that the plaintiffs are doing their business of hawking illegaly on the road without any licence or permission from the defendants and the suit places are within 250 meters from the railway station and, therefore, this area is declared as "Non-hawking zone". On such and other grounds the suit was sought to be dismissed.

The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that since the suit stalls were allotted in non-hawking zone, plaintiffs being hawkers, had no right to conduct their business in that area and, as such, they had no right or claim over the spaces allotted and the suit came to be dismissed and hence the first appeal was filed.

5. After hearing both parties and perusing the evidence as well as the judgment of the lower Court, there is no doubt whatsoever that the suit area in question is "Non-hawking zone". In this regard, my attention was invited to the Apex Court judgment in **Civil Appeal Nos. 4156-4157 of 2002 in the case of Maharashtra Ekta Hawkers Union & anr. v/s Municipal Corporation of Gr. Mumbai.** The Supreme Court has referred to the Scheme

framed earlier by order dated 9th December, 2003 which stipulated as under :-

> "The scheme framed by us will have a binding effect on all concerned. Thus apart from those to whom licenses will now be issued, no other person/body will have any right to squat or carry on any hawking or other business on the roads/streets. We direct that BMC shall bring this judgment to the notice of all Courts in which matters are now pending. We are quite sure that the concerned Court/s shall then suitably vacate/modify its injunction/stay order."

With this dicta, the Supreme Court has disposed of the matters pending before it. If this ratio is applied to the present case, it is clear that the plaitiffs have no case at all as they are not issued any licence by the defendant Corporation to conduct their business and, therefore, they are starred tracepassers in the property and defendants are within their right to squat them from the suit stalls.

In the result, the appeal has no merit and stands dismissed in limine with no order as to costs.

Consequently, the civil application No. 4561 of 2002 also stands dismissed with no order as to costs.

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